BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

MARY L. BEASLEY)
Claimant VS.))) Docket No. 205,842)
CALIBRATED FORMS CO., INC. Respondent	
AND	
EMPLOYERS MUTUAL CASUALTY CO. Insurance Carrier	

ORDER

Claimant requested review of the April 22, 1996 preliminary hearing Order entered by Administrative Law Judge Steven J. Howard.

ISSUES

The Administrative Law Judge denied claimant preliminary benefits finding she had failed to carry her burden of proving that she sustained accidental injury arising out of and in the course of her employment with the respondent. Accordingly, the sole issue presented by this appeal is whether claimant sustained injury by accident arising out of and in the course of her employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the testimony given at the preliminary hearing held April 17, 1996, together with the exhibits admitted into evidence and the briefs of the parties, the Appeals Board finds for preliminary hearing purposes that the Order of the Administrative Law Judge should be affirmed.

There is conflicting testimony concerning the onset, nature and cause of claimant's condition. Due to the conflicting testimony, the credibility of the witnesses becomes an important consideration. In weighing the evidence and considering the credibility of the witnesses, the Appeals Board takes into consideration the Administrative Law Judge's opportunity to observe the witnesses' testimony. In finding the claim noncompensable, the Administrative Law Judge must have discounted the claimant's testimony in favor of the

other witnesses. The Appeals Board gives some deference to the conclusions of the Administrative Law Judge in this regard.

Based upon a review of the record as a whole, we find that the claimant has not met her burden of proving accidental injury arising out of and in the course of her employment.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the April 22, 1996 preliminary hearing Order of Administrative Law Judge Steven J. Howard should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of July 1996.

BOARD MEMBER

c: Ronald J. Laskowski, Topeka, KS Mary L. Beasley, Pro Se Steven J. Howard, Administrative Law Judge Philip S. Harness, Director